No. 18-966

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,
PETITIONERS

v.

STATE OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR 190 BIPARTISAN ELECTED OFFICIALS, COUNTIES, AND CITIES FROM ARIZONA, COLORADO, CONNECTICUT, FLORIDA, GEORGIA, ILLINOIS, NEVADA, NEW JERSEY, NEW YORK, PENNSYLVANIA, VIRGINIA, WASHINGTON, AND WISCONSIN AS AMICI CURIAE SUPPORTING RESPONDENTS

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INTEREST OF AMICI CURIAE

Amici curiae are a bipartisan group of 190 state and local elected officials, counties, and cities, throughout the United States.[1] Amici include elected officials from Arizona, Colorado, Connecticut, Florida,

[1] A full list of amici curiae is appended to this brief. Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief, in whole or in part, and that no person other than amici or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief. The parties have granted blanket consent for the filing of amicus curiae briefs.

Georgia, Illinois, Nevada, New Jersey, New York, Pennsylvania, Virginia, Washington, and Wisconsin. Together, amici represent all areas of this country—from urban cities to small towns, from suburbs to the wide-open countryside, and everywhere in between. Amici's constituents include people of all ages, nationalities, races, and education and income levels.

The addition of a citizenship question to the census will have profound consequences for amici's constituents. It will lead to an undercount of the populations in many communities nationwide, including those represented by amici. Such an undercount will cause hundreds of millions of dollars in federal funding to be improperly allocated away from these communities, thus reducing their access to critical federal programs and depriving them of vital public services.

SUMMARY OF ARGUMENT

The census is vital in determining the allocation of more than $900 billion in federal funding amongst the 50 states, the District of Columbia, and the territories, and is intended to ensure that this funding is equitably distributed in order to reach those in need, regardless of where in the country they may reside. The court below determined that the addition of a citizenship question to the census will result in an undercount of already hard-to-count populations. These include racial and ethnic minorities, immigrant populations, and non-English speakers. Because some states have a higher percentage of hard-to-count populations, certain states will be more affected than others by an undercount. Some states will *appear* to lose population relative to other states, while other states' populations will appear to increase.

Perhaps more importantly, since many federal programs allocate federal funding based on each state's proportional share of the population, a decrease in population count in one state will reduce that state's allocation of federal funds. An undercount will, therefore, reduce federal funding available to these states for numerous public programs—programs that provide vital services to Americans across the nation. It is important to note that an undercount will not reduce the overall amount of federal funds spent on these programs; instead, it will shift funds away from states and communities with the greatest actual need for these programs towards states with less need. The affected programs and services include public education, food programs, healthcare, support for crime victims, community development, rehabilitation services, unemployment insurance costs, substance abuse services, and career and technical education grants, among many others. Further, because the census is only conducted once every ten years, any undercount in a given census will distort the allocation of federal funding for at least a decade.

As state and local officials, and municipalities, throughout the United States, amici are intimately familiar with the federal programs and services at issue here and understand deeply the potential consequences of reducing federal funding available to support them. Amici submit this brief to illustrate for the Court the important role that these programs and services play in improving the lives of Americans throughout the nation who rely upon them, and to describe in detail the impact that a census undercount will have on these programs and services as well as the individuals and families they serve.

As illustrative examples, amici describe the following two programs: Title I-A Educational Grants to Local Educational Agencies ("Title I-A") in New York and the Crime Victim Assistance Program ("VAP") in Arizona.

The Title I-A program provides funding to improve educational opportunities and outcomes for children living in poverty throughout the United States. In particular, local school districts use Title I-A funding to provide activities and resources, such as pre-kindergarten, textbooks, counseling, and graduation support, to their neediest and most disadvantaged students. The federal government allocates funds for the Title I-A program among states using census-derived data. Such data is used to determine where in the country children with the greatest need for these services live. Thus, any census undercount will reduce available funding for Title I-A programs in undercounted areas, thereby reducing the capacity of school districts in these communities to offer these much-needed services. For example, in New York, a census undercount will lead to an almost $5,000,000 reduction in Title I-A funds.

VAP provides funding to local organizations that offer direct services to crime victims, such as crisis intervention, counseling, and emergency shelter. Like Title I-A funding, VAP funds are allocated amongst states using census-derived data. Thus, an undercount of the population in any given community will lead to a reduction in the level of VAP funds allocated to that community. A decrease in funds to these communities will affect hundreds of thousands of crime victims who will be unable to access potentially life-saving aid and services. For example, in the case of Arizona, which is described in further detail below,

over 40,000 requests from crime victims for assistance through the VAP programs went unmet in 2016 due to a lack of sufficient resources. A further reduction in available funds due to a census undercount risks leaving hundreds or thousands more without necessary aid.

These examples of the practical impacts of a census undercount on public programs and the individuals and families who rely on them are illustrative of the broader negative impact of a census undercount on numerous similar programs serving millions more across the nation. The importance of an accurate and reliable census count cannot be understated. For these reasons, amici urge this Court to affirm the decision of the court below finding that the Secretary of Commerce's decision to add a citizenship question to the 2020 census violates the Administrative Procedure Act.

ARGUMENT

I. A CENSUS UNDERCOUNT WILL DISTORT POPULATION DATA ON WHICH FEDERAL-FUNDING ALLOCATIONS ARE BASED, THUS REDUCING SUPPORT FOR CRUCIAL SERVICES THROUGHOUT THE COUNTRY.

The nation's founders recognized early on the importance of accurate population counts "to accommodate our laws to the real situation of our constituents."[2]

This continues to be true over 200 years later. Today, "policy makers at all levels of government, as well

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[2] 1 Annals of Cong. 1146 (1790) (Joseph Gales ed., 1834) (remarks of James Madison on the bill for the 1790 Census).

as private businesses, households, researchers, and nonprofit organizations, rely on an accurate census in myriad ways that range far beyond the single fact of how many people live in each state."[3] Among other purposes, census data is used for "computing federal grant-in-aid benefits, drafting legislation, urban and regional planning, business planning, and academic and social studies."[4] Thus, not only does the census affect the apportionment of congressional seats, it also now determines "direct payments to individuals, grants, [and] loans" that "fund[] a substantial portion of the American economy and its system of federalism."[5]

In fiscal year 2016, there were at least ***320 federal programs*** that used census-derived data to distribute ***over $900 billion in federal funds*** throughout the country.[6] For these programs, Congress specifically intended that funding would, at least in part, be distributed and allocated based on a state's proportional share of the nation's population.[7] The addition of a citizenship question threatens the accuracy of the census and thereby the equitable distribution of federal funds.

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[3] The Council of Econ. Advisers, *The Uses of Census Data: An Analytical Review* 2 (2000), https://clintonwhitehouse4.archives.gov/media/pdf/censusreview.pdf; see also *Baldridge* v. *Shapiro*, 455 U.S. 345, 353 n.9 (1982).

[4] *Baldridge*, 445 U.S. at 353 n.9.

[5] D. Ct. Doc. 508-1 (Reamer Decl.), ¶ 9 (Nov. 7, 2018).

[6] Pet. App. 178a.

[7] See, *e.g.*, 7 C.F.R. 246.16(c)(3) (apportioning "[f]air share target funding" for supplemental food grant benefits based on share of population in poverty).

The undercount that will result from a citizenship question is well documented. As the court below found, adding a citizenship question "will cause an incremental net differential decline in self-responses among noncitizen households of *at least* 5.8%," which the court characterized as a "conservative" estimate.[8] Given the heavy reliance on census-derived data to apportion federal funds, an undercount of this magnitude would seriously impact the "ability of state and local governments to provide for quality education, public housing, transportation, health care and other services, for all their residents, citizens and non-citizens alike."[9] Indeed, "even a tiny net differential undercount of people who live in noncitizen households will cause several Plaintiffs to lose funds from federal programs that distribute resources on the basis of census-derived data."[10]

Put another way, an undercount in the census will render unreliable other census-derived data sets used to allocate federal funds. These impacts will necessarily distort allocations of funding, harming states and their residents who should be receiving a greater percentage of funding based on their need and share of the nation's population.[11]

It is important to note that this large pool of federal funds will not decrease due to the inclusion of a

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[8] Pet. App. 150a (emphasis added).

[9] D. Ct. Doc. 516-1 (Thompson Decl.), ¶ 27 (Nov. 10, 2018).

[10] Pet. App. 181a.

[11] These harms further support the district court's conclusion that Respondents have standing to bring claims against the Department of Commerce here. Pet. App. 204a–205a (citing *Carey* v. *Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980)).

citizenship question; it will just be allocated differently and incorrectly. States with higher percentages of hard-to-count populations and populations who do not respond to the census due to the citizenship question will appear to lose population relative to other states with lower percentages of hard-to-count populations. As a result, certain states will receive less funding for crucial programs and services than that to which they are entitled based on their actual population and need. This misallocation will persist for the next decade until the next decennial census.

A. A Census Undercount Will Adversely Impact Population Data Used for Federal Program Funding Formulas.

The addition of a citizenship question to the census will result in a net differential undercount largely because such a question would exacerbate existing challenges in locating and accurately counting hard-to-count groups, such as "[r]acial and ethnic minorities, immigrant populations, and non-English speakers."[12] The evidence presented below indicates the "overwhelming likelihood" that there will be a "differential decline in self-responses among noncitizens and Hispanics."[13] Thus, the addition of a citizenship question will artificially depress the census's population count in those states with the greatest percentage of these hard-to-count groups. This undercount will, in turn, impact the accuracy of census-derived datasets relied upon by federal programs.

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[12] Pet. App. 138a–139a.

[13] *Id.* at 149a.

Respondents' expert below, Dr. Andrew Reamer, identified 52 census-derived datasets that are used to distribute federal funding.[14] Chief among these datasets are the Population Estimates and the American Community Survey ("ACS").[15] These two datasets, or their derivatives, provide essential information used for the allocation of funds under many different federal programs.[16]

The Population Estimates dataset, which the Census Bureau produces annually, contains updated data about the country's population across geographical areas.[17] Population Estimates are, in effect, annual updates to the population counts estimated by the decennial census. Each year, the Census Bureau incorporates data about births, deaths, and migrations into the most recent decennial

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[14] Andrew Reamer, GW Inst. of Pub. Policy, *Census-Derived Datasets Used to Distribute Federal Funds* 1 (2018), https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Counting%20for%20Dollars%20%234%20Census-derived%20Datasets%20rev%2001-19.pdf (*Census-Derived Datasets*); see also Reamer Decl. ¶ 24 n.1 (expanding on the 32 original census-derived datasets identified in preparation for the expert report below).

[15] Reamer Decl. ¶ 11.

[16] Dr. Reamer identifies four additional foundational datasets: the Housing Estimates, the Current Population Survey, the Consumer Expenditure Survey, and the American Housing Survey. *Census-Derived Datasets* 6. Although these datasets are important, this brief focuses only on Population Estimates and the ACS.

[17] United States Census Bureau, *Methodology for the U.S. Population Estimates: Vintage 2018*, at 1 (2018), https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/2010-2018/2018-natstcopr-meth.pdf.

census or the previous year's Population Estimates to create a new estimate.[18] If the decennial census—the foundational data for the Population Estimates—is incorrect, then subsequent Population Estimates will also be incorrect. For example, an undercount of 1,000 people on the 2020 census will contribute to an undercount of 1,000 people in the first Population Estimates based on the 2020 census and will continue to depress the population count in the Population Estimates for the entire decade.[19]

The ACS also is important for understanding the impact of the census on the allocation of federal funds.[20] While the Population Estimates focus on the population count, the ACS provides detailed data on certain characteristics of the United States population, including "demographic, social, economic, and housing information."[21] This data is collected through a survey of approximately 3.5 million households.[22] Based on these surveys, the Census Bureau determines what percentage of the sample set possesses certain characteristics (*e.g.*, school enrollment), which are then multiplied by the Population Estimates for

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[18] *Ibid.*

[19] See *id.* at 3; Reamer Decl. ¶ 11.

[20] Reamer Decl. ¶ 11.

[21] United States Census Bureau, *American Community Survey Design and Methodology* 1, 35–38 (2014), https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf (*ACS Design and Methodology*).

[22] *Id.* at 36.

the same geographic area to yield an estimated number of total individuals in the United States population with that characteristic.[23]

ACS data is sometimes then augmented to create other datasets to serve specific purposes. For example, the Small Area Income and Poverty Estimates ("SAIPE") utilizes ACS data to identify the number of children living in poverty in the United States.[24] As described more fully below,[25] Congress uses the data in the SAIPE database to facilitate the administration of Title I funding to school districts based on estimates of children living in poverty.[26] For programs that rely on databases like SAIPE, which incorporate ACS data, an undercount will lead to a misallocation of federal funds for such programs.

B. Inaccurate Census-Derived Datasets Will Harm States and Individuals Across the Nation.

Federal programs that allocate funding based on census data fall into two broad categories: state-share programs and Federal Medical Assistance Percentage ("FMAP") programs. Several states would lose essential funding under both categories of programs; the worse the undercount gets, the greater the loss.

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[23] *Id.* at 135–136; see Reamer Decl. ¶ 12.

[24] See Reamer Decl. ¶ 60.

[25] See Section II.A.1, *infra*.

[26] *Small Area Income and Poverty Estimates (SAIPE) Program: 2010–2017 Overview of School District Estimates*, U.S. Census Bureau (Feb. 12, 2019), https://www.census.gov/programs-surveys/saipe/technical-documentation/methodology/school-districts/overview-school-district.html.

First, state-share programs[27] allocate money to states based "in whole or part on the state's share of the total U.S. population," often relying on Population Estimates or ACS data.[28] Thus, if a state's population is undercounted, its funding for state-share programs is reduced relative to other states. For example, the court below found that a census undercount of as little as 2% would result in a loss of funding for at least three large state-share programs in New York, New Jersey, California, Texas, Florida, Nevada, and Hawaii.[29] The Census Bureau's own estimate demonstrates that the addition of a citizenship question will result in a differential undercount of approximately 5.8%.[30] Petitioners' own expert described this estimate as conservative.[31] Still, assuming a 5.8% undercount, under these programs alone, these states stand to lose almost $80 million of federal funding annually.[32] These states would lose funding from other state-share programs as well.[33] A

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[27] State-share programs include the Supplemental Nutrition Program for Women, Infants, and Children; Crime Victim Assistance Grants; Title I; Federal Transit Formula Grants; Child Care and Development Block Grants; Community-Based Child Abuse Prevention Grants; and Older Americans Act Grants for State and Community Programs on Aging, among more than 300 others. See Pet. App. 179a n.44, 181a.

[28] Pet. App. 178a–179a.

[29] *Id.* at 179a–180a.

[30] *Id.* at 144a–145a.

[31] *Id.* at 145a.

[32] See Reamer Decl. ¶¶ 47, 52, 62.

[33] Pet. App. 180a. Depending on the size of the undercount and the program, other states, including Illinois, Massachusetts,

differential undercount would also distort outcomes *within* states, with certain counties receiving disproportionately lower distributions.[34] Put simply, a census undercount will diminish the capacity of federal programs to properly allocate funding for these programs, not only amongst states, but also at the level of county and other local governments.[35]

FMAP programs—such as Medicaid and the Children's Health Insurance Program—reimburse states for their medical expenditures.[36] A state's reimbursement rate depends on its per capita income ("PCI") relative to the nationwide PCI.[37] Broadly speaking, a state's PCI is computed by taking the state's income and dividing it by the state's Population Estimates.[38] Thus, PCI is determined, in part, based upon census data.[39] By artificially lowering a state's population count relative to its PCI, a census

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Maryland, and Washington, and the District of Columbia also stand to lose funding under state-share programs. *Ibid.*

[34] *Id.* at 182a.

[35] Amici recognize that, for state-share programs, because the total federal expenditure will not be reduced due to a census undercount, a loss of funding for one state can result in increased funding for others. That shift in federal funds, however, would result from inaccurate population data, misallocating funds and taking them away from individuals who rely on them.

[36] Reamer Decl. ¶¶ 65–66.

[37] *Id.* ¶ 65.

[38] Bureau of Econ. Analysis, Reg'l Income Div., *Local Area Personal Income and Employment Methodology* I-10 (2017), https://www.bea.gov/sites/default/files/methodologies/lapi2016.pdf.

[39] See *ibid.*

undercount will artificially inflate a state's PCI, thus reducing the state's eligibility for reimbursement for FMAP programs.

Even small undercounts can result in significant decreases in funding for FMAP programs. In fiscal year 2015 alone, FMAP programs "guided the allocation of $286.1 billion among the 50 states and the District of Columbia across five programs."[40] The court below found that, with just a 2% undercount, Arizona, Texas, Florida, Nevada, and Hawaii could lose federal reimbursements from FMAP programs.[41] If the undercount were to be as high as 5.8%, these same states combined could lose more than $535 million from Traditional Medicaid and the Children's Health Insurance Program.[42]

In order to further demonstrate the impact of a census undercount, amici describe two programs in further detail below: Title I-A in New York and VAP in Arizona.

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[40] Andrew Reamer, GW Inst. of Pub. Policy, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Funds, Report #2: Estimating Fiscal Costs of a Census Undercount to States* 2 (2018), https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/GWIPP%20Reamer%20Fiscal%20Impacts%20of%20Census%20Undercount%20on%20FMAP-based%20Programs%2003-19-18.pdf (*Estimating Fiscal Costs*).

[41] Pet. App. 180a.

[42] See Reamer Decl. ¶¶ 71, 82.

II. A CENSUS UNDERCOUNT WILL HAVE A DETRIMENTAL IMPACT ON FUNDING FOR EDUCATIONAL PROGRAMS SUCH AS TITLE I-A.

It is well established that a proper education is one of the most effective means for eliminating poverty and helping children, in particular, escape the cycle of poverty. Improving and expanding educational opportunities was a signature component of President Lyndon B. Johnson's "War on Poverty."[43] In the early 1960s, "educational deficiencies [we]re nowhere more marked than in the poverty of the schools that serve[d] the children of the poor."[44] Congress understood that the effects of childhood poverty last for years, contributing to "employment and manpower retraining problems, low levels of education among adults, [and] high unemployment rates for 18 to 24 year olds."[45]

In 1965, Congress enacted the Elementary and Secondary Education Act of 1965 ("ESEA") in order to "strengthen and improve educational quality and educational opportunities" for children disadvantaged by poverty.[46] ESEA provided for federal funding to support "compensatory services" specifically targeted to the most disadvantaged and neediest students in

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[43] See Rebecca R. Skinner & Leah Rosenstiel, Cong. Research Serv., R44898, *History of the ESEA Title I-A Programs* 7 (2017) (*ESEA History*).

[44] John F. Jennings, *Title I: Its Legislative History and Its Promise, in Title I: Compensatory Education at the Crossroads* 1, 6 (Geoffrey D. Borman et al. eds., 2001).

[45] See *ESEA History* 7.

[46] Pub L. No. 89-10, 79 Stat. 27 (1965) (codified as amended in scattered sections of 20 U.S.C.).

the country.[47] The program has evolved and grown through multiple bipartisan reforms and reauthorizations.[48] Today, this program provides millions of impoverished children increased educational opportunities, including support for English learners and migrant children, as well as incentive funding for innovation and standards-based reforms of state educational systems.[49] Recent studies have confirmed that children who have participated in Title I-funded programs show improved long-term outcomes, including increased likelihood of high school graduation, decreased likelihood of grade repetition and school suspension or expulsion, more years of completed education, higher earnings and work hours, a reduction in adulthood poverty, and reduced likelihood of incarceration before age thirty-five.[50]

A census undercount will disproportionately affect localities with relatively large numbers of low-income families, the very individuals whom ESEA was designed to help. These areas will appear to have fewer residents than they actually do, and thus receive less funding from this program than they are entitled to

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[47] David A. Gamson et al., *The Elementary and Secondary Educ. Act at Fifty: Aspirations, Effects, and Limitations*, 1 The Russell Sage Found. J. Soc. Sci., Dec. 2015, at 3, 3.

[48] See, *e.g.*, No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002); Every Student Succeeds Act, Pub L. No. 114-95, 129 Stat. 1802 (2015).

[49] Gamson, 1 The Russell Sage Found. J. Soc. Sci., Dec. 2015, at 15–16, 21–22.

[50] See, *e.g.*, Rucker C. Johnson, *Follow the Money: School Spending from Title I to Adult Earnings*, 1 Russell Sage Found. J. Soc. Sci., Dec. 2015, at 49, 71–72 (*Follow the Money*).

receive based on federal policy. These losses in funding can mean the difference between a child learning to read, or not.

One of the most important and largest grant programs affected is Title I-A.

A. Title I-A Programs Provide Crucial Support for Poor or At-Risk Students.

Title I-A funding is used for supplementary educational support services for students in elementary and secondary schools with high concentrations of students from low-income families.[51] As of 2016, the program served more than 26 million children nationwide.[52] In fiscal year 2019, Congress appropriated $15.9 billion for Title I-A grants, which represented nearly 40% of the total $40.1 billion appropriated for all pre-K-12 grant programs.[53] In 2016, more than half of all public schools in the United States received Title I funds, including two-thirds of all elementary schools.[54]

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[51] See United States Dep't of Educ., *Study of Title I Schoolwide and Targeted Assistance Programs: Final Report* 1, 11 (2018) (*U.S. DOE Study*).

[52] *Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A): Purpose*, U.S. Dep't Educ., https://www2.ed.gov/programs/titleiparta/index.html.

[53] National Educ. Ass'n, *Federal Education-Related Discretionary Programs: Final Appropriations, FY2019* (2018), http://www.nea.org/assets/docs/Conference-Agreement-FY19-Appropriations-Bills-for-Education-Related-Discretionary-Programs.pdf.

[54] See *U.S. DOE Study* 11.

Schools generally use Title I-A funds to operate two types of programs. *First*, under the "Targeted Assistance" model, the funds may be used to provide services to students who are failing, or at risk of failing, state educational performance benchmarks.[55] *Second*, certain schools can authorize "schoolwide programs" in areas with more than 40% poverty.[56] As of 2015, schoolwide programs accounted for 77% of all Title I-A-funded programs in the United States.[57] For both types of programs, the majority of Title I-A funding is spent on teaching staff to provide supplemental instruction in reading and mathematics.[58] Schoolwide programs also commonly use Title I-A funds to provide support in other subject areas, or to hire non-teacher staff, such as paraprofessionals, parent and community liaisons, technology support staff, and English-learning specialists.[59]

At the state level, funds reserved from the initial allocation of Title I-A funds can be used for several purposes. This includes "school improvement" for the lowest-performing schools (through subgrants used to

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[55] 20 U.S.C. 6315(c)(1)(B).

[56] 20 U.S.C. 6314(a); see also *U.S. DOE Study* 1.

[57] *U.S. DOE Study* 1.

[58] *Id.* at 23–25, 65.

[59] *Id.* at 15, 23, 65.

implement comprehensive school reforms),[60] and certain administrative expenses of running ESEA programs.[61]

B. A Census Undercount Will Improperly Reduce Title I-A Funding in States with the Greatest Need.

The census drives allocations of Title I-A funding. This funding is allocated based on the number of "formula children"[62] in a given area, which is an annual estimate of children age 5 to 17 who live in poverty, or reside in foster homes or institutions for neglected children.[63] In order to determine the number of "formula children," the DOE relies primarily on the SAIPE database, which uses census-derived family poverty data.[64]

A census undercount that fails to account for all children who live in poverty will affect the accuracy of

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[60] United States Dep't of Educ., *ESEA Sec. 1003 Funding for School Improvement & ESEA Sec. 1003a Direct Student Services* 7, 9 (2018), https://www2.ed.gov/policy/elsec/leg/essa/1003awebinarandpresentation.pdf.

[61] *Id.* at 51.

[62] Some of the funding formulas incorporate other data, including state average per-pupil expenditures, and state effort; however, 95% of the variance is determined by the formula children count, which is mostly determined on the basis of census-derived data. Rebecca R. Skinner & Leah Rosenstiel, Cong. Research Serv., R45141, *Analysis of the Elementary and Secondary Education Act Title I-A Allocation Formulas: Factors, Design Elements, and Allocation Patterns* 6 (2018) (*Title I-A Allocation Formulas*)

[63] 20 U.S.C. 6333(c).

[64] *Title I-A Allocation Formulas* 4 n.8; see also Section I.A, *supra*.

the SAIPE database and thus lead to a decrease in the number of formula children identified. With fewer identified formula children, states and "local educational agencies" ("LEAs")—*i.e.*, school districts—will not receive all the funds to which they are entitled.

Title I-A funds are first distributed to the states. States then reserve a portion of funds for statewide "school improvement" programs and for administrative costs associated with helping to run ESEA-related programs.[65] The remaining Title I-A funds are distributed to LEAs that allocate those funds to Title I-A-eligible schools.[66] Beyond certain statutory requirements, LEAs exercise discretion when determining the size of a particular grant to an individual school. Notably, if funds are insufficient, not all Title I-A-eligible schools will *actually* receive funding.

C. Case Study of New York State

New York State is one of the largest recipients of Title I funding. In 2018–2019, New York's school districts received over $1.2 billion in Title I-A allocations.[67] As Dr. Reamer noted in his expert testimony, and the district court confirmed, a census undercount will cause New York State to receive less Title I-A

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[65] *Title I-A Allocation Formulas* 8.

[66] A school is eligible to receive Title I-A funds if the childhood poverty rate in their school attendance area is higher than 35%. 20 U.S.C. 6313(b)(1)(A). In other words, at least 35% of the children in those school attendance areas come from families that participate in federal assistance programs or reside in homes with an annual income less than or equal to $38,443 for a family of three. 83 Fed. Reg. 20,788, 20,789 (May 8, 2018).

[67] D. Ct. Doc. 498-14 (Harmon Aff.), ¶ 7 (Nov. 6, 2018).

funding overall, thereby reducing funding available for state programs and various school districts. According to Dr. Reamer, a 5.8% undercount (a conservative figure) would result in an almost $5,000,000 loss in Title I-A funding.[68]

New York State reserves a certain amount of the overall Title I-A funding for "school improvement." These funds are provided as targeted grants to the lowest achieving schools that have demonstrated the greatest need for funding.[69] The grants are used primarily to address student needs, ensure appropriate professional development of teachers, and increase parental engagement.[70] They also have been used to support district-wide efforts to increase diversity and reduce socio-economic and racial bias in schools.[71] When needed, they also can be used to implement a "whole-school change model," which may entail implementing a reform strategy in partnership with a developer, replacing staff, or undergoing other large-scale changes.[72]

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[68] Reamer Decl. ¶ 62.

[69] *Program Description Handbook 2018-19: Title I, Part A – School Improvement – Accountability*, N.Y. State Educ. Dep't, http://www.nysed.gov/budget-coordination/title-i-part-school-improvement-accountability (last updated Dec. 10, 2018).

[70] Harmon Aff. ¶ 16.

[71] New York State Educ. Dep't, *New York State's Approved Every Student Succeeds Act Plan* 8 (2018), http://www.nysed.gov/common/nysed/files/programs/essa/nys-essa-plan.pdf.

[72] See, *e.g.*, *1003(g) School Improvement Grant (SIG) RFP# GC16-015*, N.Y. State Educ. Dep't (July 8, 2016), http://www.p12.nysed.gov/oisr/1003g-school-improvement-grant-sig-7%20repost%207-18-16.docx.

Title I funds demonstrably improve the educational outcomes of students from low-income backgrounds.[73] A recent study on school finance reforms showed that a per student "$1 increase in funding to low-income school districts will raise students' eventual earnings by more than $1 in present value."[74] A decrease in Title I-A funding to New York State would reduce available school improvement funds, potentially limiting their ability to execute transformative programs. As a result, some of the lowest performing and neediest schools in the state would lose critical opportunities to improve.

In other words, since Title I-A funds target low-income students, any cuts resulting from a census undercount will directly harm the students who need the most help.[75] Importantly, this harm is not limited to one region; it cuts across all geographic areas, affecting cities and towns, urban and rural areas, alike. Two exemplary districts are discussed in further detail below.

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[73] See *Follow the Money* 49, 71–72.

[74] See Julien Lafortune et al., *School Finance Reform and the Distribution of Student Achievement*, 10 Am. Econ. J., no. 2, 2018, at 1, 4.

[75] Schools are Title I-A eligible based on the rate of poverty in each school attendance area, measured by the eligibility for free and reduced-price lunches. New York State Educ. Dep't, *Guidance: Identification and Selection of Public School Attendance Areas and Allocation of Title I Funds to Those Areas and Schools* 7 (2018). New York districts are required to serve all schools with childhood poverty rates above 75% before prioritizing other schools according to their poverty levels and grade spans. *Id.* at 2–3.

1. Lackawanna City School District

Lackawanna, New York—a small lakeside city outside Buffalo with approximately 18,000 residents—is home to the Lackawanna City School District. Approximately 1,800 students attended the four schools in the district during the 2016–17 academic year.[76] Of those students, 89% were considered economically disadvantaged.[77] One school official described Lackawanna as a "high needs, high poverty" area.

The Lackawanna school district, which includes two elementary schools, a middle school, and a high school, receives approximately $1.3 million in Title I-A funding.[78] This funding has increased over the years, reflecting a growing need for services. Title I-A funds are used in this district to provide myriad programs and resources, including "credit recovery" programs to assist students in completing prerequisite classes, review programs to prepare students for state standardized tests, full-day pre-kindergarten classes serving over 100 students,[79] a district-wide attendance teacher and parent-family outreach coordinator

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[76] *Lackawanna City School District at a Glance*, Data.NYSED.gov, https://data.nysed.gov/profile.php?instid=800000052156.

[77] *Lackawanna City School District Enrollment*, Data.NYSED.gov, https://data.nysed.gov/enrollment.php?year=2017&instid=800000052156.

[78] New York State Educ. Dep't, *Final Allocations 2018–19 for Title I, Part A*, http://www.nysed.gov/essa/final-allocations-2018-19-title-i-part.

[79] Recent studies have demonstrated that pre-kindergarten programs are especially important for "children who have had

who supports families and parents of struggling students, and the purchase of textbooks and other reading materials.

One school official explained that a decline in Title I-A funding would be "devastating" and, depending on the amount of the reduction, would require the district to make a "Sophie's choice" between cutting either the pre-kindergarten program or the credit recovery and test review programs—*i.e.*, whether to prioritize services for the next generation of students or the current ones. Indeed, even a cut of $10,000 or $20,000—between 1% and 2% of the district's Title I-A funding—would threaten the very existence of the standardized test review course or credit recovery programs, and make the path to graduation for many high school students all the more difficult.

2. New York City School Districts

New York City has a large number of children and schools potentially eligible for Title I-A aid. Of the nearly 1,050,000 students enrolled in New York City public schools in the 2017 academic year, 72% were eligible for free or reduced-price lunch.[80] In 2019, 1,309 New York City schools received Title I-A funding based on meeting applicable poverty thresholds, which—except for Staten Island—were met if 60% of

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early experiences of economic scarcity and insecurity." Deborah A. Phillips et al., *Puzzling It out: The Current State of Scientific Knowledge on Pre-Kindergarten Effects: A Consensus Statement, in The Current State of Scientific Knowledge on Pre-Kindergarten Effects* 19, 22 (2017).

[80] *NYC Public Schools – School Report Card Data [2016 – 17]*, Data.NYSED.gov, https://data.nysed.gov/reportcard.php?instid=7889678368&year=2017&createreport=1&freelunch=1.

the student body was eligible for free or reduced-price lunch.[81] An additional 262 schools received Title I-A funding exclusively for their temporary housing students, more than 76,000 children total.[82]

In New York City, Title I-A funding supports additional teachers for English-learning assistance, math help, enrichment programs, reduced class size in certain schools, teacher professional and curriculum development, and parent and family engagement activities. For example, one elementary and middle school in southern Manhattan, which received an initial allocation of more than $313,000 in Title I-A funds for FY2018,[83] used the funds to "hir[e] instructional coaches in Literacy and Math," and to fund purchases of "professional learning books/research materials."[84] At least 90% of the

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[81] Memorandum from Lindsey Oates, Chief Fin. Officer of the N.Y.C. Dep't of Educ., to Community Superintendents, High School Superintendents, Field Support Center Teams, and School Principals, Table 2 (Aug. 8, 2018), https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy17_18/fy18_pdf/sam08_t2.xlsx. Three of the 1,309 schools did not meet the poverty threshold in 2019, but were grandfathered in. *Ibid.*

[82] *Ibid.*

[83] Memorandum from Raymond J. Orlando, Chief Fin. Officer of the N.Y.C. Dep't of Educ., to Community Superintendents, High School Superintendents, Field Support Center Teams, and School Principals, Table 2 (May 26, 2017), https://www.nycenet.edu/offices/finance_schools/budget/DSBPO/allocationmemo/fy17_18/fy18_pdf/sam08_t2.xlsx.

[84] P.S. 184m Shuang Wen, *2018–19 Comprehensive Educational Plan (CEP)* 14 (2018), https://www.nycenet.edu/Documents/oaosi/cep/2018-19/CEP_M184.pdf (*Shuang Wen CEP*).

teachers at the school engage in Title I-funded collaboration training activities to become better educators.[85] Title I-A funds also support English Language Learners and Students with Disabilities through small-group tutoring and differentiated learning environments that specifically meet their needs.[86] Due in part to Title I-A, students in this school have outperformed New York City benchmarks for proficiency in English and Math.[87]

Title I-A funding also supports parent involvement in schools, which is necessary for children to succeed.[88] The funds are used to support monthly parent meetings and workshops, among other activities.[89] They also are used to provide bilingual school newsletters,[90] and translator and interpretation services at parent-teacher conferences—services that are crucial for helping parents who primarily speak a foreign language to support their children's education.

Despite relatively high levels of student need, which have increased over the past decade, New York City's collective share of Title I-A funding has declined in recent years due to relative increases in need in

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[85] *Id.* at 20.

[86] *Id.* at 15–17.

[87] See *id.* at 10.

[88] United States Dep't of Educ., *Parental Involvement: Title I, Part A—Non-Regulatory Guidance* 1 (2004) ("As indicated by the parental involvement provisions in Title I, Part A, the involvement of parents in their children's education and schools is critical * * * *").

[89] Shuang Wen CEP 20, 23, 25–26.

[90] *Id.* at 25–26.

other parts of the State.[91] This dwindling pot of funds has stretched programs at numerous schools that rely on Title I-A funding. A further decline in available funds resulting from a census undercount will only exacerbate these effects.

In sum, a census undercount will drastically and disproportionately reduce the funding available in the neediest school districts. As a result, such districts will have to curtail, or eliminate, numerous programs and activities that directly benefit some of the most disadvantaged and neediest students in the state, further limiting those students' opportunities to escape the cycle of poverty.

III. A CENSUS UNDERCOUNT WILL HURT CRIME VICTIMS BY REDUCING FUNDING FOR VICTIM ASSISTANCE PROGRAMS.

In 1984, Congress passed the Victims of Crime Act to address the growing need to provide various types of support to victims of crime.[92] To date, the Victims of Crime Act remains the central source of federal support for crime victims via programs that assist victims of child abuse, child sexual abuse, domestic violence,

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[91] New York City Indep. Budget Office, *More Schools Eligible, Less Aid Available: Federal Support Shrinks for City Schools with Many Low-Income Students* 6–7 (2018), https://ibo.nyc.ny.us/iboreports/more-schools-eligible-less-aid-available-federal-support-shrinks-for-city%20-schools-with-many-low-income-students-2018.html.

[92] Victims of Crime Act of 1984, Pub. L. No. 98-473, Tit. II, ch. XIV, 98 Stat. 2170 (commonly known as "VOCA"); see M. Alexis Kennedy et al., Strategic Progress, LLC, *VOCA Needs Assessment Gaps Analysis: Nevada Division of Child and Family Services* 3, 10 (2017) (Kennedy et al.).

adult sexual assault, elder abuse, financial crimes, and human trafficking crimes, among others.[93]

One of the programs supported by the Victims of Crime Act is VAP, which provides funding to organizations that deliver services directly to crime victims, including crisis intervention support, counseling, emergency shelters, financial assistance, and legal and personal advocacy.[94] VAP funds more than 4,000 state organizations, which provide services to an average of 3.7 million crime victims every year.[95] In 2016, VAP-funded programs served 424,376 victims of child abuse, 574,300 victims of child sexual abuse, nearly 2.5 million victims of domestic violence, 316,447 victims of adult sexual assault, 47,784 victims of elder abuse, 173,686 victims of financial crimes, and 18,516 victims of human trafficking

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[93] Kennedy et al. 2–4, 19 n.25.

[94] 34 U.S.C. 20101(a)(3)(B), (b)(1)(A), and (d)(2)(A)–(C). In addition to VAP, the Victims of Crime Act also provides certain formula grants to states, and appropriates certain funds to the U.S. Attorney's Office, the Federal Bureau of Investigation, the Federal Victim Notification System, and the Office for Victims of Crime ("OVC"). 34 U.S.C. 20101(d)(2), (3)(A), and (4)(C); *OVC Fact Sheet: Crime Victims Fund*, U.S. Dep't of Just., Off. for Victims of Crime, https://ojp.gov/ovc/pubs/crimevictimsfundfs/intro.html#voca (*OVC Fact Sheet*). The Victims of Crime Act also funds state crime victim compensation programs, which directly reimburse violent crime victims for out-of-pocket expenses. 34 U.S.C. 20102(a)(1) and (b); *OVC Fact Sheet*.

[95] *VOCA Funding*, Nat'l Ass'n of VOCA Assistance Admins., http://www.navaa.org/budget/index.html (*VOCA Funding*).

crimes, among others.[96] VAP funds are allocated to the states based on their populations.[97]

A. VAP Provides Crucial, Life-Saving Services to Crime Victims.

VAP-funded programs are often the first, and sometimes only, source of support for victims of crimes.[98] Since 2015, annual VAP allocations have remained above $1.85 billion, reaching almost $3.33 billion in 2018.[99] In 2017, VAP-funded programs served over five million crime victims.[100]

Yet, there appears to still be unmet need. In 2017, victims in only 8.3% of violent crime incidents and 10.4% of serious violent crime incidents received assistance through these programs.[101] Among other

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[96] *2017 OVC Report to the Nation*, U.S. Just. Dep't, Off. Just. Programs: Off. for Victims of Crime, https://www.ovc.gov/pubs/reporttonation2017/exhibits.html.

[97] 34 U.S.C. 20103(a)(3)(B); *VOCA Funding*.

[98] Steve Derene, Nat'l Ass'n of VOCA Assistance Admin., *Victims of Crime Act (VOCA) Crime Victims Fund: Briefing Background 2017*, at 4 (2017), http://www.navaa.org/budget/17/VOCA_Backgrounder%202017.pdf (*VOCA Briefing Background*).

[99] *VOCA Victim Assistance Grants*, Nat'l Ass'n of VOCA Assistance Admins., http://www.navaa.org/budget/18/VOCA%20Victim%20Assistance%20Grants.pdf (*VOCA Assistance Grants*).

[100] U.S. Dep't of Justice, Office for Victims of Crime, *Victims of Crime Act Victim Assistance Formula Grant Program: Fiscal Year 2017 Data Analysis Report* 1, https://www.ovc.gov/grants/vocanpr_va17.pdf (*2017 Data Analysis Report*).

[101] Rachel E. Morgan & Jennifer L. Truman, U.S. Dep't of Justice, *Criminal Victimization, 2017*, at 8 (2018), https://www.bjs.gov/content/pub/pdf/cv17.pdf.

gaps, there continues to be "[a] lack of affordable housing options for crime victims," "[a]n increase in the number of human trafficking" victims, and "[d]ifficulty [ensuring victims] receiv[e] appropriate mental health services due to lack of availability."[102]

Violent crimes exact a high toll: Medical costs associated with violence and abuse add up to roughly $750 billion each year—approximately 37.5% of total health care costs in the country.[103] Each year, an estimated eight million days of paid work are lost due to domestic violence.[104] Without proper care, counseling, and support, crime victims are more likely to suffer mental illness, become unemployed, or develop substance abuse problems.[105]

The ability to properly allocate VAP funds is essential to ensuring that VAP-funded programs provide much-needed aid to millions of Americans. An inaccurate census count would significantly hamper the government's ability to do so.

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[102] *2017 Data Analysis Report* 8.

[103] Kennedy et al. 2.

[104] *Id.* at 3.

[105] *The Victims of Crime Act: 25 Years of Protecting and Supporting Victims: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 46 (2009) (statement of Mary Lou Leary, Executive Director, National Center for Victims of Crime).

B. A Census Undercount Will Improperly Reduce Funding for VAP Programs for Certain States and Impair Their Ability to Provide Vital Services to Crime Victims.

Under the Victims of Crime Act, each state receives a base amount of $500,000 in VAP funding.[106] Remaining VAP funds are then allocated to each state based on its population, which is calculated using Population Estimates.[107] Each state receives funding proportionally, based on its share of the U.S. population.[108] Thus, states with an artificial population undercount will lose VAP funding. Assuming a 5.8% undercount, at least eleven states would have lost VAP funds in 2018.[109] To take just one example emblematic of the larger problem, amici discuss Arizona's VAP program below.

C. Case Study of Arizona

The Arizona Department of Public Safety ("DPS") administers the state's VAP funding throughout

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[106] 34 U.S.C. 20103(a)(3)(A) and (5)(A).

[107] See Marisa Hotchkiss & Jessica Phelan, U.S. Census Bureau, *Uses of Census Data in Federal Funds Distribution* 16 (2017); see also Section I.A, *supra*.

[108] 34 U.S.C. 20103(a)(3)(B).

[109] These states include Arizona, California, Colorado, Connecticut, Florida, Hawaii, Nevada, New Jersey, New Mexico, New York, and Texas. Notably, 12 elected officials in Arizona and the City of Tucson have signed on as amici to this brief, acknowledging the gravity of this harm to their constituents and residents.

Arizona's fifteen counties.[110] This funding is used to provide services such as crisis intervention, counseling, legal assistance, and forensic evidence collection to victims of a wide variety of crimes.[111]

In 2018, DPS allocated about $70.1 million to victims of sexual assault, spousal abuse, child abuse, and those who belong to previously underserved populations (such as LGBTQ victims and victims of DUI drivers), in addition to funding programs that serve victims of elder abuse, human trafficking, and robbery.[112] The need for these services is high. In 2016, for instance, Arizona VAP programs served 159,349 individuals.[113] Yet 41,575 requests for services went unmet due to a lack of organizational capacity.[114]

In 2017, Arizona received reports of 229,977 criminal offenses, with a rate of 442 violent offenses per

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[110] *Victims of Crime Act (VOCA) Victim Assistance - DPS VOCA Administration Unit*, Ariz. Dep't of Pub. Safety, https://www.azdps.gov/services/enforcement/crime-victims.

[111] *Request for Grant Application: Federal Fiscal Years 2018, 2019, and 2020*, Ariz. Dep't of Pub. Safety, at 1, https://sage.azdps.gov/Documentation/RFGA.pdf.

[112] See *VOCA Assistance Grants*.

[113] Arizona Dep't of Pub. Safety, *AZ Annual State Performance Report Victim Assistance Formula Grant Program Reporting Period: [Oct 1, 2015 to Sept 30, 2016]*, at 6 (2017), https://ojp.gov/ovc/grants/VOCA-Victim-Assistance-FY-2016-State-Performance-Report/az.pdf.

[114] *Id.* at 9.

100,000 people,[115] which is *15% higher* than the national average (383 per 100,000 people).[116] Thus, at baseline, Arizona's need for VAP funding is higher than that of the average state. It is, therefore, no surprise that Arizona consistently exhausts its VAP funding, and state officials report that current funding is not sufficient to meet existing needs. Any census undercount would further reduce the funding that Arizona receives per person relative to other states. Thus, further funding losses would only exacerbate the existing shortage of funds and prevent the state from funding new programs that might provide new types of support, or support previously unserved crime victims.

Dr. Warshaw, one of Respondents' experts below, estimated that a 5.8% differential undercount of noncitizen and Hispanic households would result in a 2.1% reduction in Arizona's population count on the census.[117] Under that scenario, the shifts in Arizona's relative population would result in a loss of more than $450,000 in the state's 2018 VAP funding.

Such funding losses would reduce the funding available to Arizona's VAP programs, money that otherwise would have been available, despite Arizona's *actual* population and needs remaining the same (or perhaps growing). Below, amici describe two organizations to illustrate what this loss will mean for states like Arizona.

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[115] Arizona Dep't of Pub. Safety, *Crime in Arizona: January-December 2017*, at 30 (2018), http://www.azdps.gov/sites/default/files/media/FINAL_Crime_in_Arizona_2017.pdf.

[116] Federal Bureau of Investigation, *Uniform Crime Report: Crime in the United States, 2017*, at 1 (2018).

[117] D. Ct. Doc. 526-1 (Warshaw Decl.), 19 tbl.5 (Nov. 13, 2018).

1. A New Leaf

Founded in 1971, A New Leaf specializes in crisis and family support services, providing critical resources to vulnerable populations in the Phoenix metropolitan area, including teaching skills such as budgeting, providing affordable housing solutions, and supporting foster care and counseling.[118] VAP funding is integral to A New Leaf's many programs described further below:

Women's Crisis Shelters. A New Leaf's two Women's Crisis Shelters provide shelter twenty-four hours a day for women and children who have been victims of domestic violence, sexual assault, and human trafficking.[119] The Women's Crisis Shelters provide women and children with crisis interventions, safety planning, education, advocacy, and referrals to other providers.[120]

The Women's Crisis Shelters rely on VAP funding to compensate their staff. Many of their staff members—ranging from case managers to children's specialists—cover three shifts a day, seven days a week, on a modest salary ranging from approximately $27,000 to $35,000.[121] The estimated $450,000 in lost VAP funding to Arizona due to an undercount could

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[118] *About*, A New Leaf, https://www.turnanewleaf.org/about/.

[119] See A New Leaf, *Arizona VOCA Funding Application: Faith House Women's Crisis Shelter* 8–9 (Jan. 3, 2018) (*Faith House Application*); A New Leaf, *Arizona VOCA Funding Application: Autumn House* 8, 11 (Jan. 12, 2018) (*Autumn House Application*).

[120] *Faith House Application* 7; *Autumn House Application* 11–12.

[121] *Faith House Application* 21; *Autumn House Application* 21.

fund 15 case managers, 13 additional service coordinators, or 16 additional children's specialists.[122]

Court Advocacy Program ("CAP"). Through CAP, A New Leaf assists victims of domestic violence in navigating the often overwhelming court system.[123] For example, CAP advocates assist domestic violence victims obtain orders of protection and injunctions against their abusers.[124] As it stands, however, this program can only serve about 75% of the victims who request services.[125] A reduction in funding would threaten to further reduce this figure. For instance, in its 2018 request for funding, A New Leaf sought VAP funds for a CAP advocate with a salary of $28,600.[126] In real terms, therefore, the estimated lost money for Arizona is equivalent to approximately 16 additional CAP advocates.

Domestic Violence Safe Temporary Overflow Program ("DVSTOP"). DVSTOP has supported victims of domestic violence since 1999, by providing "a viable support system" to those who need a place to stay when domestic abuse shelters are full, and operates the only domestic violence call center in the entire Phoenix Metropolitan area.[127] In fiscal year 2015, DVSTOP fielded nearly 17,000 calls from

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[122] See *ibid.*

[123] A New Leaf, *Arizona VOCA Funding Application: Court Advocacy Program* 8, 11 (Jan. 3, 2018).

[124] *Id.* at 11.

[125] *Id.* at 17.

[126] *Id.* at 19.

[127] A New Leaf, *Arizona VOCA Funding Application: DVSTOP Program* 6, 8 (Aug. 7, 2017).

victims of domestic abuse, and provided temporary shelter for 495 victims who "may have otherwise been forced to remain in an unsafe, abusive situation," 50% of whom were under the age of 18.[128] Any loss of funding would significantly impact its ability to serve domestic violence survivors. For instance, the estimated $450,000 that Arizona would lose could be used to pay all seven of DVSTOP's current managers.[129] Conversely, those funds could be used to double the size of the team, allowing DVSTOP to serve even more Arizonans in need.[130]

2. Against Abuse, Inc.

Against Abuse, Inc. ("AAI") has provided social services in Pinal County, Arizona since 1981.[131] AAI offers domestic violence victims two shelters (the only shelters of their kind in western Pinal County), free crisis counseling, a thrift store, and free and confidential sexual assault services, among others.[132]

Reduced VAP funding would threaten the services AAI provides to this community. For instance, the funding that Arizona would lose due to a 5.8% differential undercount could almost fund one of AAI's shelters *for an entire year*. As it stands, AAI's shelters already struggle to support their operations, and its two shelters are underfunded by approximately

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[128] *Id.* at 11.

[129] *Id.* at 19.

[130] *Ibid.*

[131] *History*, Against Abuse, Inc., http://www.against-abuse.org.

[132] *Programs: La Casa de la Paz*, Against Abuse, Inc., http://www.against-abuse.org/programs.

$250,000.[133] The amount of funding Arizona would lose due to an undercount would further exacerbate these pressures.

Conversely, funds that would be lost as a result of an undercount could be used to expand AAI's client assistance programs, which provide crime victims with a number of services, including relocation. According to a staff member, AAI currently uses $45,000 of VAP funding for these purposes, but, with an additional $450,000, AAI could expand the reach of this program by an order of magnitude.

* * * * *

In short, VAP funds save lives—quite literally. A reduction in available funds of any amount due to a census undercount would draw resources away from those who use and need the services they provide the most. Such an outcome would diminish the capacity of these organizations to provide essential services, or prevent them from expanding to meet unmet needs.

CONCLUSION

The census is used, among other purposes, to determine the allocation of more than $900 billion in federal funding across more than 320 federal programs. An accurate census is essential to ensure that this funding reaches those most in need. The addition of a citizenship question to the 2020 census will result in an undercount of already hard-to-count populations, artificially reducing the population count for certain states and communities. This, in turn, will

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[133] Maricopa Shelter Services, *Budget Recommendations* 1 (2019); Casa Grande Shelter Services, *Budget Recommendations* 1 (2019).

lead to a misallocation of federal funding—potentially for the next decade—improperly reducing funds available for numerous public programs in these states. The effects of an undercount will be far-reaching, affecting millions of Americans throughout the country whose access to essential, and sometimes life-saving programs, will be diminished, if not entirely foreclosed. For these reasons, the decision of the lower court should be affirmed.

Respectfully submitted.

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APRIL 2019

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APPENDIX: IDENTITY OF AMICI CURIAE

County of Albany, New York by Daniel P. McCoy, County Executive.

County of Steuben, New York.

City of Alexandria, Virginia.

Village of Skokie, Illinois.

City of Tucson, Arizona.

City of Waukegan, Illinois.

Eric L. Adams, Brooklyn Borough President, Brooklyn, New York.

David Ahrens, City Alder, Madison, Wisconsin.

Alma Anaya, County Commissioner, Cook County, Illinois.

Jimmy Anderson, State Representative, Wisconsin.

John Arena, City Alderman, Chicago, Illinois.

Alexander Assefa, State Assembly Member, Nevada.

Diana Ayala, City Council Member, New York City, New York.

John W. Bartlett, County Freeholder Director, Passaic County, New Jersey.

Nancy Barr, County Legislator, Westchester County, New York.

Steve Bellone, County Executive, Suffolk County, New York.

Sarah Benatar, County Treasurer, Coconino County, Arizona.

Shiva Bidar-Sielaff, City Alder, Madison, Wisconsin.

Reginald Bolding, State Representative, Arizona.

Catherine A. Borgia, County Legislator, Westchester County, New York.

Sherry Boston, District Attorney, DeKalb County, Georgia.

David Bowen, State Representative, Wisconsin.

Benjamin Boykin, County Legislator, Westchester County, New York.

Geoff Brace, County Commissioner, Lehigh County, Pennsylvania.

Matthew Bradford, State Representative, Pennsylvania.

Justin Brasch, City Council Member, White Plains, New York.

Gale A. Brewer, Manhattan Borough President, New York, New York.

Cynthia Briscoe Brown, Board of Education Member at Large, Atlanta, Georgia.

Jonathan Brostoff, State Representative, Wisconsin.

David Buchwald, State Assembly Member, New York.

Kate Burke, City Council Member, Spokane, Washington.

Kathee Burke-Gonzalez, Town Council Member, East Hampton, New York.

Ryan Calkins, Port of Seattle Commissioner, Seattle, Washington.

Yvanna Cancela, State Senator, Nevada.

Andrés Cano, State Representative, Arizona.

Terry Clements, County Legislator, Westchester County, New York.

Eileen Cody, State Representative, Washington.

Hon. Richard S. Conti, Common Council President Pro Tempore, Albany, New York.

Jim Cooper, City Council Member, Olympia, Washington.

Robert E. Cornegy, Jr., City Council Member, New York City, New York.

Harriet Cornell, County Legislator, Rockland County, New York.

Kitley Covill, County Legislator, Westchester County, New York.

Marcos Crespo, State Assembly Member, New York.

Laura Curran, County Executive, Nassau County, New York.

Andrea Dalessandro, State Senator, Arizona.

Jeannie Darneille, State Senator, Washington.

Mona Das, State Senator, Washington.

Matt de Ferranti, County Board Member, Arlington County, Virginia.

Manka Dhingra, State Senator, Washington.

Rubén Díaz, Jr., Bronx Borough President, Bronx, New York.

Inez E. Dickens, State Assembly Member, New York.

Jeffrey Dinowitz, State Assembly Member, New York.

Todd Donovan, County Council Member, Whatcom County, Washington.

Christian Dorsey, County Board Member, Arlington County, Virginia.

Mark Douglas, Deputy Mayor, Sunrise, Florida.

Toney L. Earl, County Legislator, Rockland County, New York.

Harvey Epstein, State Assembly Member, New York.

Diego Espinoza, State Representative, Arizona.

Malik D. Evans, City Council Member, Rochester, New York.

Hon. Catherine M. Fahey, Common Council Member, Albany, New York.

Amir Farokhi, City Council Member, Atlanta, Georgia.

Delia Farquharson, City Council Member, Mount Vernon, New York.

Sam Fein, County Legislator, Albany County, New York.

Deborah Frank Feinen, Mayor, Champaign, Illinois.

Barry Fertel, City Council Member, New Rochelle, New York.

Caren Fitzpatrick, County Freeholder at Large, Atlantic County, New Jersey.

Justin Flippen, Mayor, Wilton Manors, Florida.

Cassie Franklin, Mayor, Everett, Washington.

Liz Fried, City Council Member, New Rochelle, New York.

David Frockt, State Senator, Washington.

Robyn Gabel, State Representative, Illinois.

Marcelino Garcia, Metropolitan Water Reclamation District Commissioner, Chicago, Illinois.

Sally Ann Gonzales, State Senator, Arizona.

Richard Gottfried, State Assembly Member, New York.

Will Guzzardi, State Representative, Illinois.

Rex Hardin, Mayor at Large, Pompano Beach, Florida.

Bob Hasegawa, State Senator, Washington.

Derrick Henry, Mayor, Daytona Beach, Florida.

Dennis Higgins, City Council Member, Kent, Washington.

Katie Hobbs, Secretary of State, Arizona.

Joseph Hohenstein, State Representative, Pennsylvania.

Janet Howell, State Senator, Virginia.

Sam Hunt, State Senator, Washington.

Pamela Hunter, State Assembly Member, New York.

Robert Hutchinson, County Commissioner, Alachua County, Florida.

Mohammad Iqbal, County Board Member, Kane County, Illinois.

Jonathan Jacobson, State Assembly Member, New York.

Keith James, City Commissioner and Mayor Elect, West Palm Beach, Florida.

Corey Johnson, City Council Speaker, New York City, New York.

Christopher A. Johnson, County Legislator, Westchester County, New York.

Andrew Joyce, County Legislator, Albany County, New York.

Yehiel Mark Kalish, State Representative, Illinois.

Ben Kallos, City Council Member, New York City, New York.

Todd Kaminsky, State Senator, New York.

Michael B. Kaplowitz, County Legislator, Westchester County, New York.

Melissa Kaprelian-Becker, Supervisor, Racine County, Wisconsin.

Melinda R. Katz, Queens Borough President, Queens, New York.

Karen Keiser, State Senator, Washington.

Stephen Kinsey, State Representative, Pennsylvania.

Shelley Kloba, State Representative, Washington.

Liz Krueger, State Senator, New York.

Chris Larson, State Senator, Wisconsin.

Matt Lesser, State Senator, Connecticut.

Willie J. Lightfoot, City Council Member, Rochester, New York.

Marko Liias, State Senator, Washington.

Liz Lovelett, State Senator, Washington.

Nancy Low-Hogan, County Legislator, Rockland County, New York.

Damon R. Maher, County Legislator, Westchester County, New York.

Alan N. Maisel, City Council Member, New York City, New York.

John M. Martin, City Council President, White Plains, New York.

Cory Mason, Mayor, Racine, Wisconsin.

John McCoy, State Senator, Washington.

Delores McQuinn, State Delegate, Virginia.

Ryan Mello, City Council Member, Tacoma, Washington.

Carlos Menchaca, City Council Member, New York City, New York.

Jen Metzger, State Senator, New York.

Bob Morgan, State Representative, Illinois.

Kevin B. Morrison, County Commissioner, Cook County, Illinois.

Teresa Mosqueda, Council Member, Seattle, Washington.

Jeri Muoio, Mayor, West Palm Beach, Florida.

Greta Neubauer, State Representative, Wisconsin.

Dr. Barbara A. Seals Nevergold, Buffalo Board of Education President and Member at Large, Buffalo, New York.

Marcelia Nicholson, County Supervisor, Milwaukee County, Wisconsin.

Félix W. Ortiz, State Assembly Member, New York.

Sylvia Ortiz-Velez, County Supervisor, Milwaukee County, Wisconsin.

Steven Otis, State Assembly Member, New York.

Elena Parent, State Senator, Georgia.

Sam Park, State Representative, Georgia.

Catherine Parker, County Legislator, Westchester County, New York.

Amy Paulin, State Assembly Member, New York.

Ameya Pawar, City Alderman, Chicago, Illinois.

Cindy Polo, State Representative, Florida.

Marcia Price, State Delegate, Virginia.

Anita Prizio, County Council Member, Allegheny County, Pennsylvania.

Dan Quart, State Assembly Member, New York.

Martín Quezada, State Senator, Arizona.

Chris Rabb, State Representative, Pennsylvania.

Emily Randall, State Senator, Washington.

David A. Reid, State Delegate, Virginia.

Adele B. Reiter, Acting County Executive, Ulster County, New York.

Julie Renehan, County Board Member, DuPage County, Illinois.

Darden Rice, City Council Member, St. Petersburg, Florida.

Pete Rios, County Supervisor, Pinal County, Arizona.

Rebecca Rios, State Senator, Arizona.

Carlina Rivera, City Council Member, New York City, New York.

J. Gustavo Rivera, State Senator, New York.

Dylan Roberts, State Representative, Colorado.

Helen Rosenthal, City Council Member, New York City, New York.

Marsha A. Rummel, City Alder, Madison, Wisconsin.

Julia Salazar, State Senator, New York.

Rebecca Saldaña, State Senator, Washington.

Nader J. Sayegh, State Assembly Member, New York.

Andrew Schauer, County Supervisor, Dane County, Wisconsin.

Mike Schlossberg, State Representative, Pennsylvania.

Jack Schnirman, County Comptroller, Nassau County, New York.

Rebecca A. Seawright, State Assembly Member, New York.

Hon. Darius Shahinfar, City Treasurer, Albany, New York.

Kathy M. Sheehan, Mayor, Albany, New York.

MaryJane Shimsky, County Legislator, Westchester County, New York.

Christine Sinicki, State Representative, Wisconsin.

Ben Sorensen, Vice Mayor, Fort Lauderdale, Florida.

Mark Spreitzer, State Representative, Wisconsin.

Debra Stark, City Council Member, Phoenix, Arizona.

Toby Ann Stavisky, State Senator, New York.

F. John Steffen, City Council Member, Elgin, Illinois.

Lisa Subeck, State Representative, Wisconsin.

Annette Taddeo-Goldstein, State Senator, Florida.

Tannia Talento, School Board Vice Chair, Arlington County, Virginia.

Raquel Terán, State Representative, Arizona.

Fred W. Thiele, Jr., State Assembly Member, New York.

Kevin Thomas, State Senator, New York.

Ritchie J. Torres, City Council Member, New York City, New York.

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Lyndon D. Williams, County Legislator, Westchester County, New York.

John Wilson, County Assessor, King County, Washington.

Alden Wolfe, County Legislator, Rockland County, New York.

Beau Wright, City Council Member, Lynchburg, Virginia.

Hon. Tremaine S. Wright, State Assembly Member, New York.

Mike Zabel, State Representative, Pennsylvania.

Frits Zernike, County Legislator, Dutchess County, New York.